

Taxable Possessory Interests

General

A taxable possessory interest is defined as a possession, a right to the possession, or a claim to a right of the possession of publicly owned real property that is independent, durable, and exclusive of rights held by others, and that provides a private benefit to the possessor. A taxable possessory interest is further defined as the taxable interest held by a private possessor in publicly owned real property. Some examples of taxable possessory interests include cabins located on publicly owned land, aircraft hangars and tie-downs at publicly owned airports, grazing permits issued on publicly owned land, and concessionaires at county owned fairgrounds.

Taxable possessory interests are subject to taxation pursuant to [article XIII, section 1](#) of the California Constitution, which provides that all property is taxable unless otherwise provided by the California Constitution or federal law. While publicly owned real property is generally exempt from taxation, under certain conditions, the private, beneficial right to the possession of publicly owned real property is subject to separate assessment as a taxable possessory interest.

[Section 107](#) and [Rule 20](#) provide the definition of a taxable possessory interest, and limit that definition to interests held in real property (land and improvements) only. Current statutory and regulatory provisions do not authorize the taxation of possessory interests in personal property, with one exception. In accordance with [section 201.5](#), taxable possessory interests in property acquired by or for the California Pollution Control Financing Authority, whether in real or personal property, are subject to taxation. In all other cases, a possessory interest in personal property is not taxable.

In general, the provisions of [article XIII A](#) of the California Constitution and related statutes and regulations also apply to the assessment of taxable possessory interests. As such, taxable possessory interests are subject to the following:

- A taxable possessory interest receives a base year value according to [section 110.1](#).
- Annually thereafter, the taxable value of the possessory interest is the lesser of its factored base year value or its fair market value, as prescribed in [section 51](#).
- A taxable possessory interest is subject to the change in ownership and new construction provisions of [section 60](#) (and the following) and [section 70](#) (and the following).
- A taxable possessory interest is subject to supplemental assessment under [section 75.10](#) (and the following), unless the [section 75.5](#) exclusion applies.

A detailed discussion regarding the assessment of taxable possessory interests can be found in [Assessors' Handbook Section 510, Assessment of Taxable Possessory Interests \(AH 510\)](#).

Scope of Review

The BOE's assessment practices survey includes a review of the assessor's practices and procedures for discovering and assessing all taxable possessory interests in the county.

The specific areas of review may include, but are not limited to, the following:

General Program Elements

- Does the assessor have written procedures, policies, and/or forms for discovering and assessing taxable possessory interests?
- Does the assessor enroll taxable possessory interests on the unsecured roll, secured roll, or both?
- How many taxable possessory interests are currently being assessed on the secured roll? Or on the unsecured roll?
- If the assessor enrolls taxable possessory interests on the secured roll, does the assessor have approval from the county board of supervisors allowing this practice?
- Does the name of the specific state, federal, or local agency holding title to the publicly owned land show on the roll? If not, how does the assessor identify which agency to contact when further information is needed?
- Who is responsible for tracking and assessing all taxable possessory interests in the county?
- Does the assessor obtain copies of current leases and/or permits for all taxable possessory interests?
- Are copies of leases and/or permits maintained in the property record file?
- Does the county have a low-value ordinance in effect, which includes an exemption for taxable possessory interests?
 - What is the low-value maximum threshold for taxable possessory interests?
 - Does the county's low-value ordinance include an increased exemption level for taxable possessory interests located at the fairgrounds or at a convention center?

Discovery

- Does the assessor have a procedure in place to discover potential taxable possessory interests?
- How many public agencies owning real property in the county does the assessor annually contact?
- Does the assessor use Board-prescribed form [BOE-502-P, Possessory Interests Annual Usage Report](#)? Or something else?

Term of Possession

- For a taxable possessory interest with a current lease or permit, does the assessor use the remaining stated term of possession as the reasonably anticipated term of possession?

- If the assessor uses something other than the remaining stated term of possession, does the assessor have clear and convincing evidence that the parties have reached a mutual understanding or agreement, indicating that some other reasonably anticipated term of possession has been agreed to between the parties?
- Does the assessor include all written options to renew the lease in the stated term of possession?
- For a taxable possessory interest without a stated term of possession, or one that is on a month-to-month lease, how does the assessor determine what reasonably anticipated term of possession to use?

Valuation (Post-*De Luz*)

- What valuation method(s) does the assessor use to value taxable possessory interests?
 - Comparative Sales Approach-Direct Method?
 - Comparative Sales Approach-Indirect Method?
 - Income Approach-Direct Method?
 - Income Approach-Indirect Method?
 - Cost Approach?
- When using the Comparative Sales Approach-Direct Method, does the assessor add to the sale price the present value on the sale date of the unpaid future contract rents for the reasonably anticipated term of possession?
- When using the Income Approach,
 - Does the assessor deduct for expenses incurred by the landlord (owner) when appropriate?
 - Does the assessor use current market rents?
 - How does the assessor develop the capitalization rate to be used?
 - When developing the capitalization rate, does the assessor include a property tax component only when the landlord is responsible for paying the property taxes?
- When using the Cost Approach, does the assessor deduct the estimated present value of the improvements that revert back to the public owner at the end of the reasonably anticipated term of possession?

Change in Ownership

- What does the assessor consider to be a change in ownership?
 - Creation of a taxable possessory interest?
 - Renewal or extension of a taxable possessory interest?
 - Assignment of a taxable possessory interest?
- Does the assessor establish a new base year value for a taxable possessory interest when there is a change in ownership?

- For an extension or renewal of a taxable possessory interest that occurs within the reasonably anticipated term of possession used by the assessor to initially establish the base year value, does the assessor:
 - Reappraise the taxable possessory interest at the time of renewal or extension of the term of the lease?
 - Reappraise the taxable possessory interest at the end of the reasonably anticipated term of possession used by the assessor to initially establish the base year value?
- Does the assessor have a tracking system in place to alert the assessor when reasonably anticipated terms of possession have expired causing a change in ownership? If not, how does the assessor become aware of these changes in ownership?

Declines in Value

- How does the assessor discover potential declines in value of taxable possessory interests?
- How does the assessor make a value determination for a decline in value of a taxable possessory interest with a stated term of possession?
- How does the assessor make a value determination for a decline in value of a taxable possessory interest without a stated term of possession or one that has a month-to-month tenancy?

New Construction

- Does the assessor identify and assess completed new construction activity associated with a taxable possessory interest when appropriate?

Supplemental Assessments

- Does the assessor issue supplemental assessments for taxable possessory interests:
 - Due to a change in ownership?
 - Completion of new construction?
- Does the assessor issue a negative supplemental assessment when a taxable possessory interest is terminated mid-year?
- Does the assessor properly issue a supplemental assessment for the newly created taxable possessory interest based on its fair market value without offset for a prior value on the regular assessment roll?
- In accordance with [section 75.5](#), does the assessor properly exclude from supplemental assessment those newly created taxable possessory interests that were established by a month-to-month agreement and have a full cash value of \$50,000 or less?

Special Assessment Issues

- Does the assessor have any taxable possessory interests in personal property on the roll?
- Does the assessor have any federal enclaves located in the county? If so, is the assessor assessing any taxable possessory interests located within a federal enclave?

- Does the assessor have any Indian reservation land located in the county? If so, is the assessor properly handling taxable possessory interests located on Indian reservation land when the possessor is a non-Indian?
- Does the assessor have any pre-*De Luz* taxable possessory interests? If so, is the assessor using the proper valuation technique (*Blinn* method) to value these taxable possessory interests?